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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Plaintiff,)
v.) Case No.
Defendant.)
[PROPOSED] STIPULATED PROTECTIVE ORDER

1. **A. PURPOSES AND LIMITATIONS**

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate to and petition the Court to enter the following Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles. The parties further acknowledge, as set forth in Section 12.3, below, that this Stipulated Protective Order does not entitle them to file confidential information under seal; Civil Local Rule 79-5 sets forth the

1 procedures that must be followed and the standards that will be applied when a party seeks
2 permission from the court to file material under seal.

3
4 **B. GOOD CAUSE STATEMENT**

5 **[*The “Good Cause Statement” should be edited to include or exclude specific information**
6 **that applies to the particular case, i.e., what harm will result from the disclosure of the**
7 **confidential information likely to be produced in this case? Below is an example]:**

8 This action is likely to involve trade secrets, customer and pricing lists and other valuable
9 research, development, commercial, financial, technical and/or proprietary information for which
10 special protection from public disclosure and from use for any purpose other than prosecution of
11 this action is warranted. Such confidential and proprietary materials and information consist of,
12 among other things, confidential business or financial information, information regarding
13 confidential business practices, or other confidential research, development, or commercial
14 information (including information implicating privacy rights of third parties), information otherwise
15 generally unavailable to the public, or which may be privileged or otherwise protected from
16 disclosure under state or federal statutes, court rules, case decisions, or common law.
17 Accordingly, to expedite the flow of information, to facilitate the prompt resolution of disputes over
18 confidentiality of discovery materials, to adequately protect information the parties are entitled to
19 keep confidential, to ensure that the parties are permitted reasonable necessary uses of such
20 material in preparation for and in the conduct of trial, to address their handling at the end of the
21 litigation, and serve the ends of justice, a protective order for such information is justified in this
22 matter. It is the intent of the parties that information will not be designated as confidential for
23 tactical reasons and that nothing be so designated without a good faith belief that it has been
24 maintained in a confidential, non-public manner, and there is good cause why it should not be part
25 of the public record of this case.

26 /

27 /

28 /

1 **2. DEFINITIONS**

2 2.1 Action: [this pending federal law suit]. [*Option: consolidated or related actions.]

3 2.2 Challenging Party: a Party or Non-Party that challenges the designation of
4 information or items under this Order.

5 2.3 “CONFIDENTIAL” Information or Items: information (regardless of how it is
6 generated, stored or maintained) or tangible things that qualify for protection under Federal Rule
7 of Civil Procedure 26(c), and as specified above in the Good Cause Statement.

8 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as their support
9 staff).

10 2.5 Designating Party: a Party or Non-Party that designates information or items that
11 it produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

12 2.6 Disclosure or Discovery Material: all items or information, regardless of the medium
13 or manner in which it is generated, stored, or maintained (including, among other things,
14 testimony, transcripts, and tangible things), that are produced or generated in disclosures or
15 responses to discovery in this matter.

16 2.7 Expert: a person with specialized knowledge or experience in a matter pertinent to
17 the litigation who has been retained by a Party or its counsel to serve as an expert witness or as
18 a consultant in this Action.

19 2.8 House Counsel: attorneys who are employees of a party to this Action. House
20 Counsel does not include Outside Counsel of Record or any other outside counsel.

21 2.9 Non-Party: any natural person, partnership, corporation, association, or other legal
22 entity not named as a Party to this action.

23 2.10 Outside Counsel of Record: attorneys who are not employees of a party to this
24 Action but are retained to represent or advise a party to this Action and have appeared in this
25 Action on behalf of that party or are affiliated with a law firm that has appeared on behalf of that
26 party, including support staff.

27 2.11 Party: any party to this Action, including all of its officers, directors, employees,
28 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

1 2.12 Producing Party: a Party or Non-Party that produces Disclosure or Discovery
2 Material in this Action.

3 2.13 Professional Vendors: persons or entities that provide litigation support services
4 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing,
5 storing, or retrieving data in any form or medium) and their employees and subcontractors.

6 2.14 Protected Material: any Disclosure or Discovery Material that is designated as
7 “CONFIDENTIAL.”

8 2.15 Receiving Party: a Party that receives Disclosure or Discovery Material from a
9 Producing Party.

10
11 **3. SCOPE**

12 The protections conferred by this Stipulation and Order cover not only Protected Material
13 (as defined above), but also (1) any information copied or extracted from Protected Material; (2)
14 all copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony,
15 conversations, or presentations by Parties or their Counsel that might reveal Protected Material.

16 Any use of Protected Material at trial shall be governed by the orders of the trial judge.
17 This Order does not govern the use of Protected Material at trial.

18
19 **4. DURATION**

20 Once a case proceeds to trial, all of the information to be introduced that was previously
21 designated as confidential or maintained pursuant to this protective order becomes public and will
22 be presumptively available to all members of the public, including the press, unless compelling
23 reasons supported by specific factual findings to proceed otherwise are made to the trial judge
24 in advance of the trial. See Kamakana v. City and County of Honolulu, 447 F.3d 1172, 1180-81
25 (9th Cir. 2006) (distinguishing “good cause” showing for sealing documents produced in discovery
26 from “compelling reasons” standard when merits-related documents are part of court record).
27 Accordingly, the terms of this protective order do not extend beyond the commencement of the
28 trial.

1 **5. DESIGNATING PROTECTED MATERIAL**

2 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party
3 or Non-Party that designates information or items for protection under this Order must take care
4 to limit any such designation to specific material that qualifies under the appropriate standards.
5 The Designating Party must designate for protection only those parts of material, documents,
6 items, or oral or written communications that qualify so that other portions of the material,
7 documents, items, or communications for which protection is not warranted are not swept
8 unjustifiably within the ambit of this Order.

9 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
10 shown to be clearly unjustified or that have been made for an improper purpose (e.g., to
11 unnecessarily encumber the case development process or to impose unnecessary expenses and
12 burdens on other parties) may expose the Designating Party to sanctions.

13 If it comes to a Designating Party's attention that information or items that it designated for
14 protection do not qualify for protection, that Designating Party must promptly notify all other
15 Parties that it is withdrawing the inapplicable designation.

16 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order
17 (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered,
18 Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so
19 designated before the material is disclosed or produced.

20 Designation in conformity with this Order requires:

21 (a) for information in documentary form (e.g., paper or electronic documents, but
22 excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing Party
23 affix, at a minimum, the legend "CONFIDENTIAL" (hereinafter "CONFIDENTIAL legend"), to each
24 page that contains protected material. If only a portion or portions of the material on a page
25 qualifies for protection, the Producing Party also must clearly identify the protected portion(s) (e.g.,
26 by making appropriate markings in the margins).

27 A Party or Non-Party that makes original documents available for inspection need not
28 designate them for protection until after the inspecting Party has indicated which documents it

1 would like copied and produced. During the inspection and before the designation, all of the
2 material made available for inspection shall be deemed "CONFIDENTIAL." After the inspecting
3 Party has identified the documents it wants copied and produced, the Producing Party must
4 determine which documents, or portions thereof, qualify for protection under this Order. Then,
5 before producing the specified documents, the Producing Party must affix the "CONFIDENTIAL
6 legend" to each page that contains Protected Material. If only a portion or portions of the material
7 on a page qualifies for protection, the Producing Party also must clearly identify the protected
8 portion(s) (e.g., by making appropriate markings in the margins).

9 (b) for testimony given in depositions that the Designating Party identify the Disclosure
10 or Discovery Material on the record, before the close of the deposition.

11 (c) for information produced in some form other than documentary and for any other
12 tangible items, that the Producing Party affix in a prominent place on the exterior of the container
13 or containers in which the information is stored the legend "CONFIDENTIAL." If only a portion or
14 portions of the information warrants protection, the Producing Party, to the extent practicable, shall
15 identify the protected portion(s).

16 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
17 designate qualified information or items does not, standing alone, waive the Designating Party's
18 right to secure protection under this Order for such material. Upon timely correction of a
19 designation, the Receiving Party must make reasonable efforts to assure that the material is
20 treated in accordance with the provisions of this Order.

21 22 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

23 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of
24 confidentiality at any time that is consistent with the Court's Scheduling Order.

25 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution process
26 under Local Rule 37.1, et seq. Any discovery motion must strictly comply with the procedures set
27 forth in Local Rules 37-1, 37-2, and 37-3.

28

1 6.3 Burden. The burden of persuasion in any such challenge proceeding shall be on
2 the Designating Party. Frivolous challenges, and those made for an improper purpose (e.g., to
3 harass or impose unnecessary expenses and burdens on other parties) may expose the
4 Challenging Party to sanctions. Unless the Designating Party has waived or withdrawn the
5 confidentiality designation, all parties shall continue to afford the material in question the level of
6 protection to which it is entitled under the Producing Party’s designation until the Court rules on
7 the challenge.

8
9 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

10 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed
11 or produced by another Party or by a Non-Party in connection with this Action only for prosecuting,
12 defending, or attempting to settle this Action. Such Protected Material may be disclosed only to
13 the categories of persons and under the conditions described in this Order. When the Action has
14 been terminated, a Receiving Party must comply with the provisions of section 13 below (FINAL
15 DISPOSITION).

16 Protected Material must be stored and maintained by a Receiving Party at a location and
17 in a secure manner that ensures that access is limited to the persons authorized under this Order.

18 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered by
19 the Court or permitted in writing by the Designating Party, a Receiving Party may disclose any
20 information or item designated “CONFIDENTIAL” only to:

21 (a) the Receiving Party’s Outside Counsel of Record in this Action, as well as
22 employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the
23 information for this Action;

24 (b) the officers, directors, and employees (including House Counsel) of the Receiving
25 Party to whom disclosure is reasonably necessary for this Action;

26 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is
27 reasonably necessary for this Action and who have signed the “Acknowledgment and Agreement
28 to Be Bound” (Exhibit A);

1 (d) the Court and its personnel;

2 (e) court reporters and their staff;

3 (f) professional jury or trial consultants, mock jurors, and Professional Vendors to whom
4 disclosure is reasonably necessary for this Action and who have signed the “Acknowledgment and
5 Agreement to Be Bound” (Exhibit A);

6 (g) the author or recipient of a document containing the information or a custodian or
7 other person who otherwise possessed or knew the information;

8 (h) during their depositions, witnesses, and attorneys for witnesses, in the Action to
9 whom disclosure is reasonably necessary provided: (1) the deposing party requests that the
10 witness sign the form attached as Exhibit 1 hereto; and (2) they will not be permitted to keep any
11 confidential information unless they sign the “Acknowledgment and Agreement to Be Bound”
12 (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the Court. Pages of
13 transcribed deposition testimony or exhibits to depositions that reveal Protected Material may be
14 separately bound by the court reporter and may not be disclosed to anyone except as permitted
15 under this Stipulated Protective Order; and

16 (i) any mediator or settlement officer, and their supporting personnel, mutually agreed
17 upon by any of the parties engaged in settlement discussions.

18
19 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER**
20 **LITIGATION**

21 If a Party is served with a subpoena or a court order issued in other litigation that compels
22 disclosure of any information or items designated in this Action as “CONFIDENTIAL,” that Party
23 must:

24 (a) promptly notify in writing the Designating Party. Such notification shall include a
25 copy of the subpoena or court order;

26 (b) promptly notify in writing the party who caused the subpoena or order to issue in
27 the other litigation that some or all of the material covered by the subpoena or order is subject to
28 this Protective Order. Such notification shall include a copy of this Stipulated Protective Order; and

1 (c) cooperate with respect to all reasonable procedures sought to be pursued by the
2 Designating Party whose Protected Material may be affected.

3 If the Designating Party timely seeks a protective order, the Party served with the subpoena
4 or court order shall not produce any information designated in this action as “CONFIDENTIAL”
5 before a determination by the court from which the subpoena or order issued, unless the Party
6 has obtained the Designating Party’s permission. The Designating Party shall bear the burden and
7 expense of seeking protection in that court of its confidential material and nothing in these
8 provisions should be construed as authorizing or encouraging a Receiving Party in this Action to
9 disobey a lawful directive from another court.

10
11 **9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS**
12 **LITIGATION**

13 (a) The terms of this Order are applicable to information produced by a Non-Party in
14 this Action and designated as “CONFIDENTIAL.” Such information produced by Non-Parties in
15 connection with this litigation is protected by the remedies and relief provided by this Order.
16 Nothing in these provisions should be construed as prohibiting a Non-Party from seeking
17 additional protections.

18 (b) In the event that a Party is required, by a valid discovery request, to produce a Non-
19 Party’s confidential information in its possession, and the Party is subject to an agreement with
20 the Non-Party not to produce the Non-Party’s confidential information, then the Party shall:

21 (1) promptly notify in writing the Requesting Party and the Non-Party that some or
22 all of the information requested is subject to a confidentiality agreement with a Non-Party;

23 (2) promptly provide the Non-Party with a copy of the Stipulated Protective Order
24 in this Action, the relevant discovery request(s), and a reasonably specific description of the
25 information requested; and

26 (3) make the information requested available for inspection by the Non-Party, if
27 requested.

1 (c) If the Non-Party fails to seek a protective order from this Court within 14 days of
2 receiving the notice and accompanying information, the Receiving Party may produce the Non-
3 Party's confidential information responsive to the discovery request. If the Non-Party timely seeks
4 a protective order, the Receiving Party shall not produce any information in its possession or
5 control that is subject to the confidentiality agreement with the Non-Party before a determination
6 by the Court. Absent a court order to the contrary, the Non-Party shall bear the burden and
7 expense of seeking protection in this Court of its Protected Material.

8
9 10. **UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

10 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected
11 Material to any person or in any circumstance not authorized under this Stipulated Protective
12 Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the
13 unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the
14 Protected Material, (c) inform the person or persons to whom unauthorized disclosures were
15 made of all the terms of this Order, and (d) request such person or persons to execute the
16 "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit A.

17
18 11. **INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED**
19 **MATERIAL**

20 When a Producing Party gives notice to Receiving Parties that certain inadvertently
21 produced material is subject to a claim of privilege or other protection, the obligations of the
22 Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision
23 is not intended to modify whatever procedure may be established in an e-discovery order that
24 provides for production without prior privilege review. Pursuant to Federal Rule of Evidence 502(d)
25 and (e), insofar as the parties reach an agreement on the effect of disclosure of a communication
26 or information covered by the attorney-client privilege or work product protection, the parties may
27 incorporate their agreement in the stipulated protective order submitted to the Court.

1 **MISCELLANEOUS**

2 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to
3 seek its modification by the Court in the future.

4 12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order,
5 no Party waives any right it otherwise would have to object to disclosing or producing any
6 information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no
7 Party waives any right to object on any ground to use in evidence of any of the material covered
8 by this Protective Order.

9 12.3 Filing Protected Material. A Party that seeks to file under seal any Protected
10 Material must comply with Civil Local Rule 79-5. Protected Material may only be filed under seal
11 pursuant to a court order authorizing the sealing of the specific Protected Material at issue; good
12 cause must be shown in the request to file under seal. If a Party's request to file Protected
13 Material under seal is denied by the Court, then the Receiving Party may file the information in
14 the public record unless otherwise instructed by the Court.

15
16 **FINAL DISPOSITION**

17 After the final disposition of this Action, within 60 days of a written request by the
18 Designating Party, each Receiving Party must return all Protected Material to the Producing Party
19 or destroy such material. As used in this subdivision, "all Protected Material" includes all copies,
20 abstracts, compilations, summaries, and any other format reproducing or capturing any of the
21 Protected Material. Whether the Protected Material is returned or destroyed, the Receiving Party
22 must submit a written certification to the Producing Party (and, if not the same person or entity,
23 to the Designating Party) by the 60 day deadline that (1) identifies (by category, where
24 appropriate) all the Protected Material that was returned or destroyed and (2) affirms that the
25 Receiving Party has not retained any copies, abstracts, compilations, summaries or any other
26 format reproducing or capturing any of the Protected Material. Notwithstanding this provision,
27 counsel are entitled to retain an archival copy of all pleadings, motion papers, trial, deposition, and
28 hearing transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert

1 reports, attorney work product, and consultant and expert work product, even if such materials
2 contain Protected Material. Any such archival copies that contain or constitute Protected Material
3 remain subject to this Protective Order as set forth in Section 4 (DURATION).

4 14. Any violation of this Order may be punished by any and all appropriate measures including,
5 without limitation, contempt proceedings and/or monetary sanctions.

6
7 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**

8
9 DATED _____

10
11 _____
12 Attorneys for Plaintiff

13
14 DATED: _____

15
16 _____
17 Attorneys for Defendant

18
19 **FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.**

20
21 DATED: _____

22
23 _____
24 Paul L. Abrams
25 United States District/Magistrate Judge

1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3
4 I, _____ [print or type full name], of _____
5 [print or type full address], declare under penalty of perjury that I have read in its entirety and
6 understand the Stipulated Protective Order that was issued by the United States District Court for
7 the Central District of California on [date] in the case of _____ **[insert formal name of the**
8 **case and the number and initials assigned to it by the court]**. I agree to comply with and to
9 be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge
10 that failure to so comply could expose me to sanctions and punishment in the nature of contempt.
11 I solemnly promise that I will not disclose in any manner any information or item that is subject to
12 this Stipulated Protective Order to any person or entity except in strict compliance with the
13 provisions of this Order.

14 I further agree to submit to the jurisdiction of the United States District Court for the Central
15 District of California for the purpose of enforcing the terms of this Stipulated Protective Order,
16 even if such enforcement proceedings occur after termination of this action. I hereby appoint
17 _____ [print or type full name] of
18 _____ [print or type full address and telephone
19 number] as my California agent for service of process in connection with this action or any
20 proceedings related to enforcement of this Stipulated Protective Order.

21 Date: _____

22 City and State where sworn and signed: _____

23
24 Printed name: _____

25
26 Signature: _____